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SUPREME COURT, U. S.

In The

Supreme Court of the United States

October Term, 1964
No. 299

INTERNATIONAL ORGANIZATION MASTERS, MATES & PILOTS OF AMERICA, INC., Etc., et al.,

Petitioners

vs.

INTERNATIONAL ORGANIZATION MASTERS, MATES & PILOTS OF AMERICA, LOCAL NO. 2, Etc., et al.,

Respondents

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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Case Caption

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 299

International Organization Masters, Mates and Pilots of America, Local No. 2, an unincorporated organization by Edmund H. Stoughton and Samuel J. Schweigert,

Trustees ad Litem

and

Edmund H. Stoughton, Samuel J. Schweigert, Thomas N. Reed, Arthur W. Smith, Weldon J. Lucas, Charles G. Devos, Willard S. King, Leon Cohen, J. Francis Sibre, Peter Petruncio, Newton E. Zartman, H. C. D. Vickers,

Respondents

v.

International Organization Masters, Mates and Pilots of America Inc., a Corporation, Morris Weinstein, Alleged Trustee, International Organization Masters, Mates and Pilots, Local No. 2; C. T. Atkins, President of International Organization Masters, Mates and Pilots of America, Inc.; John J. Handley, Alleged Secretary-Treasurer, International Organization Masters, Mates and Pilots, Local No. 2,

Petitioners

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

I.

COUNTER-STATEMENT OF THE CASE

The matter comes before the Court upon plaintiffs' complaint and the preliminary objections (demurrer) thereto of the defendants. The nisi prius court sustained the preliminary objections and dismissed the complaint.

On appeal by the plaintiffs to the Supreme Court of Pennsylvania, that court reversed the lower court and remanded the case for further proceedings. Such further proceedings contemplated by the decision involve the filing of an answer by the defendants and after issue is joined, the trial of the case. Whether plaintiffs will be successful in proving the allegations of their complaint, or the damages they allege, remains to be seen.

The complaint[1] alleged that the defendants "illegally and in violation of the Constitution and By-Laws of Local No. 2, the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania, deprived plaintiffs of membership in the Trusteeship Local No. 2 without preferring charges and without a hearing." Plaintiffs further alleged that "solely by reason of the

[1] The original complaint also attacked the trusteeship set up by the International, but this count has been abandoned by the present complaint.

illegal, wrongful and improper **expulsion** . . ." that they have lost earnings. The allegations in essence are identical to those made in *International Association of Machinists v. Gonzales,* 356 U.S. 617, which complaint was printed in plaintiffs' paperbook as an Appendix in the appeal before the Pennsylvania Supreme Court.

II.

QUESTIONS PRESENTED

1. Is the decision of the Pennsylvania Supreme Court a "final" judgment as required by 28 U.S.C. §1257?

2. Should the *Gonzales* case be overruled when it was based on an express exemption set forth in the statute excluding internal matters of union membership?

III.

ARGUMENT

A. The decision of the Pennsylvania Supreme Court overruling a demurrer sustained by the lower court is not a "final" judgment since further proceedings are required, and hence, the matter is not ripe for review by certiorari.

By Act of Congress, 28 U.S.C. §1257, the Supreme Court is given the right of review by certiorari only of "final judgments or decrees rendered by the highest court of a State in which a decision could be had."

A judgment of a State court overruling a demurrer to a complaint and returning the case to the lower court for further proceedings is not a final judgment reviewable by the United States Supreme Court: *Werner v. Charleston*, 151 U.S. 360; *Meagher v. Minnesota Thresher Mfg. Co.* 145 U.S. 608; *Rice v. Sanger*, 144 U.S. 197; *Hume v. Bowie*, 148 U.S. 245; *McComb v. Commissioners*, 91 U.S. 1.

Local No. 438 Construction & Gen. Lab. U. v. Curry, 371 U.S. 542, cited by petitioners to sustain review of an interlocutory order is inapplicable here. In that case the State court had authorized the issuance of a temporary injunction which, as the Court observed, "may effectively dispose of petitioner's rights and render entirely illusory his right to review here as well as his right to a hearing before the Labor Board."

No such **necessity** exists in the instant case. There is no order against petitioner here and it remains to be seen whether plaintiffs will be able to prove their case and their damages. Petitioners' right to review after a trial will not be illusory but will afford petitioners complete opportunity to raise any question, including the question they now seek to raise. In the *Curry* case, a hearing had been held and petitioner agreed that he had no further defense to make to the granting of the injunction. All the facts were before the Georgia Supreme Court when it issued the temporary injunction. In the posture of the present case no facts were before the Pennsylvania Supreme Court and there is no way of knowing what the facts will be until after trial. There is no reason for assuming jurisdiction here before a trial. In fact no answer has yet been filed by petitioners and it is unknown what defenses they will put forth.

B. The *Gonzales* case should not be overruled since it is based upon an exemption in the statute.

Gonzales involved a union member who was expelled from the union in violation of his rights and he sued the union for reinstatement and consequential damages flowing from the expulsion. We have the same exact case in the matter at Bar. Petitioners admit this when they say: "This case is practically Gonzales reincarnated." (page 7 of Pet.)

That *Gonzales* was properly decided may be seen from the following telling excerpt in that case:

"But the protection of union members in their

rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied. The proviso to §8 (b) (1) of the Act states that 'this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *' 61 Stat. 141, 29 U.S.C. §158 (b) (1), 29 U.S.C.A. §158 (b) (1). The present controversy is one that gives legal efficacy under state law to the rules prescribed by a labor organization for 'retention of membership therein.' Thus, to preclude a state court from exerting its traditional jurisdiction to determine and enforce the rights of union membership would in many cases leave an unjustly ousted member without remedy for the *restoration* of his important union rights." 356 U.S. at p. 620.

Petitioner attempts to equate unlike things in order to cast doubt upon the *Gonzales* case. Mr. Justice Frankfurter wrote the majority opinion in both *Gonzales* and *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, involving not a union-member controversy, but a picketing situation. Mr. Justice Frankfurter in the *Garmon* case (359 U.S. at p. 241) even refers to the vitality of the *Gonzales* case by saying:

> "As we pointed out the *other day*, 'the statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation.' International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 619, 78 S. Ct. 923, 924, 21 L. Ed. 2d 1018."

This quote from Mr. Justice Frankfurter's opinion in the *Second Garmon* case would hardly indicate that he was overruling his own Opinion in the *Gonzales* case rendered "the other day." What the Court is saying is that each case has to be decided on an *ad hoc* basis. The *Gonzales* case decided and settled once and for all the question of union-member controversy. The *Garmon* case decided the situation concerning picketing. One decision does not cancel the other; it is merely delineating the respective spheres of jurisdiction. This is known as the process of "litigating elucidation." Petitioner is in error in thinking the *Gonzales* case is destroyed.

None of the intermediate federal courts have concluded that the *Gonzales* case has been undercut or destroyed. E.g., *Bussey v. Plumbers Local No. 3, etc.*, 286 F. 2d 165 (10th Cir. 1961); *Burns v. United Brotherhood of Carpenters, etc.*, 204 F. Supp. 599 (D.C. Del. 1962); *Parks v. International Brotherhood of Electrical Workers*, 203 F. Supp. 288, 292, 293 (D.C. Md. 1962); *GIBA v. International Workers*, 205 F. Supp. 553, 556, 557 (D.C. Conn. 1962). State courts have also decided similarly to the Pennsylvania Supreme Court in this case: *Lockridge v. Amalgamated Ass'n of St. E. R. & M. C. Emp.*, 369 P. 2d 1006 (Idaho 1962); *Dempsey v. Great Atlantic & Pacific Tea Co.*, 197 N.Y.S. 2d 744 (1960); *Green v. Folks*, 208 N.Y.S. 2d 559, 215 N.Y.S. 2nd 116, 223 N.Y.S. 2d 287;

A recent commentary on the Second Gonzales case and the policies of the NLRA cites the Gonzales case as good law. *"State Power To Govern Concerted Employee Activities," Frank S. Michelman*, 74 Harv. L. Rev. 641, pp. 653-654 (1961).

In *Local 100, United Association of Journeymen and Apprentices v. Borden*, 373 U.S. 690, cited by petitioner,

the union member was not expelled by the union at all. The suit was based upon the union's violation of Section 8 (b) (1) (a) which declares a labor organization guilty of an unfair labor practice if it attempts "to restrain or coerce employees in the exercise of the rights guaranteed in section 7 . . ." In that case the union was charged with being guilty of an unfair labor practice in attempting to coerce the plaintiff into complying with certain union rules by preventing him from obtaining employment. **The gravamen of the instant complaint is not that the union prevented plaintiffs from obtaining employment but that the union ousted or expelled plaintiffs.** The union did no more than this. It was a natural consequence of this that the plaintiffs suffered loss of earnings since employers call the Union Hall for men.

In *Local No. 207, International Assn of Bridge, Structural and Ornamental Iron Workers Union v. Perko*, 373 U.S. 701, also cited by petitioners, the union conspired with the employer to deprive the plaintiff of his right to continue to work as a foreman. This kind of conduct is clearly proscribed by the Taft-Hartley Act and has no application to the facts in our case.

The Court in the *Borden* case was at pains to point out that *Gonzales* was still good law. Therefore, while the *Gonzales* case cannot be stretched to cover the factual situation in the *Borden* case it is clear that *Gonzales* still applies to *Gonzales*. The dissent by Justice Douglas and Clark was based on the belief that the *Gonzales* case could be stretched to cover even *Borden*. Mr. Justice Harlan, author of the *Borden* decision, cites in a footnote the proviso contained in Sec. 8 (b) (1) (a), 29 U.S.C. §158 (b) (1), for the proposition that internal union matters are excluded from NLBR jurisdiction. If *Gonzales* were bad

law, Mr. Justice Harlan would hardly have discussed its holding and meaning. A matter may be arguable until a Supreme Court decision decides it. *Incres Steamship Co. v. International Maritime Workers Union*, 372 U.S. 24, 27. *Gonzales* surely brought to rest the question of state jurisdiction over wrongful union expulsion.

Under the circumstances, the pleadings fully justified the decision by the Pennsylvania Supreme Court which is both thorough and comprehensive and is fully in accord with the decisions of your Honorable Court.

CONCLUSION

The Petition for a Writ of Certiorari is not based upon a final judgment and should therefore be denied. Furthermore, the Pennsylvania Supreme Court committed no error in its decision but rather patterned its decision upon the tenets and dictates of the decisions of this Honorable Court. Wherefore, it is respectfully requested that the Petition be denied.

Respectfully submitted,

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Attorneys for Respondents.